

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 191 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MADHUBEN W/O MANUBHAI L MAHIDA

Versus

MANUBHAI LAKSHMANABHAI MAHIDE

Appearance:

MR JITENDRA MALKAN for Petitioner
MR SK BUKHARI for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 29/10/96

ORAL JUDGEMENT

1. Rule. I have heard the parties at length on merits and, I, therefore, proceed to dispose of the petition finally.

2. This Criminal Revision Application is filed by Madhuben-original applicant in Misc. Criminal Application

No.29 of 1982, which was filed by her against respondent No.1 under Section 125 of the Code of Criminal Procedure, for maintenance. The said application has been allowed and she has been awarded monthly maintenance at the rate of Rs.250/- and, hence, the original applicant has come before this Court only to challenge the quantum of maintenance awarded to her.

2. Admittedly, respondent No.1 is working in Gujarat Refinery and it is the claim of the present petitioner that his monthly emoluments are more than Rs.10,000/-. When respondent No.1 is admittedly working in Gujarat Refinery and when the petitioner was contending that his monthly emoluments are more than Rs.10,000/-, it was incumbent upon him to produce on record his pay certificate to show what are his actual emoluments. It must be remembered that the proceeding under Section 125 is a quasi civil and quasi criminal proceeding and, consequently, the respondent ought to have produced his pay certificate in order to show what is actually earned by him. When he does not produce such a certificate, then it becomes very difficult to reject the claim of the petitioner. No doubt, in the Trial Court, he had produced a certificate dated 14.7.1983 showing his basic pay of Rs.1307.90 ps., but the judicial notice can be taken of the fact that from 1983 till the date of the decision of the Trial Court, i.e. on 20th March, 1996, the pay scales of the employees have been revised from time to time. Therefore, the conclusion to which the learned Judicial Magistrate has arrived that the total emoluments of the respondent might not be less than Rs.4400/- could not be said to be improper or illegal. It is very pertinent to note that, it is not the claim of respondent No.1 that, besides the present petitioner, nobody else is dependent on him. No doubt, it has come in evidence that he is married with another lady and it is submitted at the time of the arguments before me that he has also got two issues from that lady. No doubt, his marriage with such woman would be illegal in view of the fact that the marriage between the petitioner and respondent No.1 is subsisting, but the two children born out of the said illegal marriage would legally dependent on respondent No.1 and they would be entitled to claim maintenance from him. Therefore, that liability of respondent No.1 to maintain his two children and the fact that he is also living with another woman could be taken into consideration while fixing the quantum of maintenance.

3. It is very pertinent to note that there was no material before the learned Magistrate to hold that the

present petitioner was earning anything and no material was produced to show that, she had any source of income. The petitioner before me is more than 50 years of age. Therefore, taking into consideration the age of her and the fact that she has no source of income, and the soaring prices of essential commodities coupled with the fact that respondent No.1 earns more than Rs.4000/- per month and also considering his liabilities, the learned Judicial Magistrate was not at all justified in not awarding her the maintenance of Rs.500/- per month. The said quantum of Rs.500/- is also quite insufficient in these days of soaring prices of the essential commodities, but in view of the earnings of respondent No.1 and his liabilities, I hold that the order of awarding maintenance of Rs.250/- to the present revision applicant is not at all justified and that the same same deserves to be interfered by invoking the revisional jurisdiction. I, therefore, hold that the present revision application will have to be allowed and I order that, in the order passed by the learned Judicial Magistrate, First Class, Vadodara, in Misc. Criminal Application No.29 of 1982, the figure of Rs.250/- (Rupees two hundred and fifty only) be deleted and in place the figure of Rs.500/- (Rupees five hundred only) be inserted and the rest of the part of the final order in that application stands confirmed. This revision application is allowed as indicated above. Rule is made absolute.

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